

18 May 2022

Dear stakeholder

## **Open letter to participants – Retail Payment System Act 2022**

1. The Retail Payment System Act 2022 (**the Act**) came into force on 14 May 2022. We have written this letter to:
  - 1.1 help you determine whether you are a participant of a retail payment network;
  - 1.2 inform participants of how the Act may impact them, including if they have obligations under the initial pricing standard for the Mastercard and Visa credit and debit networks;
  - 1.3 outline the Commerce Commission’s priorities in commencing our role under the Act; and
  - 1.4 explain what to expect from our engagement with you.

### **Overview of the Retail Payment System Act**

2. The purpose of the Act is to promote competition and efficiency in the retail payment system for the long-term benefit of New Zealand merchants and consumers.
3. The full Act can be found [here](#).
4. The New Zealand retail payment system comprises many retail payment networks. These include (but are not limited to) credit, debit and prepaid card-based networks, bank transfers, cheques, EFTPOS, buy now, pay later networks, gift cards, public transport cards, cheques and cash.
5. The Act introduces a new regulatory regime and confers certain functions and powers on the Commission. All the functions and powers conferred on the Commission under the Act are effective now as of 14 May 2022. Figure 1 summarises our powers and responsibilities in relation to the Act.

### **Are you a participant under the Retail Payment System Act?**

6. The Act defines a participant of a retail payment network, to mean a person that is a network operator or any other service provider.

7. A network operator is any person that is or does one or more of the following:
  - 7.1 is wholly or partly responsible to the participants (or any of them) for the network rules;
  - 7.2 operates or manages the network or the core infrastructure of the network.
8. A service provider means any person that provides or facilitates the provision of payment services in the network (for example, a payment service provider or an infrastructure service provider) but does not include merchants.
9. As an example – participants of card scheme payment networks include, but are not limited to, card scheme operators, issuers, acquirers, switch operators, terminal providers and payment gateways.
10. Depending on the activities of your business, you may be a participant of one or more than one retail payment network. For example, issuers which are banks may be participants of multiple retail payment networks.

### **How could the Retail Payment System Act affect participants?**

#### *Different participants may be affected when a network is designated*

11. A retail payment network is not subject to regulation under the Act (other than monitoring) unless it is designated. This involves a series of recommendations – from the Commission to the Minister of Commerce and Consumer Affairs, and from the Minister to the Governor-General. In making a recommendation, the Commission must take into account a number of factors and consult on the proposed recommendation.<sup>1</sup>
12. If a retail payment network is designated, the Commission may set standards covering, but not limited to, information disclosure, access or pricing requirements. The Commission can also give directions to participants regarding the network's rules. For example, the Commission could require certain network rules to be set, amended or notified.
13. Initially only the Visa and Mastercard credit and debit networks have been designated under the Act. This means there are no immediate requirements on you under the Act, unless you are a participant in those initially designated networks. Such participants include Visa, Mastercard, and issuers and acquirers in the Visa and Mastercard networks.

#### *Initial pricing standard for the Mastercard and Visa credit and debit networks*

14. The initial pricing standard will come into force on 13 November 2022, six months after enactment. The initial pricing standard introduces regulated interchange fee

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<sup>1</sup> Retail Payment System Act 2022, sections 12-13.

limits for Mastercard and Visa credit and debit transactions, which are set out in Schedule 1 of the Act.<sup>2</sup>

15. Visa, Mastercard, issuers, and acquirers need to ensure interchange fees are at or below the caps by 13 November 2022.

*Surcharging standards may apply to merchants*

16. Merchants are not participants under the Act. However, the Act does give the Commission the power to issue merchant surcharging standards that would impose requirements on merchants using retail payment services. These standards may limit payment surcharges and/or set requirements regarding disclosure, record-keeping and presentation of payments surcharges. These standards may be applied to payments made using any network, not just those that have been designated.

*We will need information from participants to inform our wider monitoring work*

17. One of the Commission's functions under the Act is monitoring the competition and efficiency of the retail payment system as a whole.
18. We will be engaging with, and requesting information from, participants of both designated and undesignated networks as part of this monitoring work.

**What are the Commission's priorities?**

19. Our initial priorities are:
  - 19.1 Establishing our approach to ensuring compliance with the initial pricing standard and providing guidance on this. At this stage we intend to engage on the following matters:
    - 19.1.1 Our approach to monitoring and enforcing compliance with the initial pricing standard;
    - 19.1.2 Guidance on how we interpret the definition of a "commercial credit payment product"; and
    - 19.1.3 Guidance on "net compensation".
  - 19.2 Monitoring the outcomes of the initial pricing standard being applied.
  - 19.3 Undertaking research to better understand the extent and form of surcharges currently charged by merchants.
20. These initial priorities sit against the backdrop of activity to build our capacity and capability to fulfil our responsibilities under the Act. We have established a new team in the Market Regulation Branch to carry out our work relating to the retail

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<sup>2</sup> Retail Payment System Act 2022

<https://www.legislation.govt.nz/act/public/2022/0021/latest/LMS528082.html>

payment system. We want to work closely with industry as we develop our understanding of how the system works and any issues with competition and efficiency within it.

### **What to expect from our engagement with you**

21. We are seeking to engage with participants across all retail payment networks. This is a new area of responsibility for the Commission, so we want to work closely with industry as we develop our understanding of how the retail payment system works and any issues with competition and efficiency within it. This engagement is important for building ongoing relationships, building our understanding of the system, discussing our initial priorities and expectations, and answering any questions you may have.
22. We have begun engaging with participants of the initial designated networks, prioritising those participants facing obligations under the initial pricing standard. We will then be engaging with other designated network participants.
23. For participants of undesignated networks, you can expect to hear from us as we progress our work programme.

### *Disclosure of information and correspondence*

24. We may request information on both an ad-hoc basis and in the form of ongoing reporting. We appreciate that information we receive could be commercially sensitive. We have robust systems and processes in place for receiving and handling this information. In line with the principle of transparency in the Act, we will seek to be as transparent as possible while being mindful of commercial sensitivities.
25. All information held by the Commission is subject to the Official Information Act 1982. Under the Official Information Act, all information is to be made available unless good reasons exist to withhold it. Reasons to withhold disclosure include where release would unreasonably prejudice the commercial position of the supplier or subject of the information, although this must be balanced against the public interest in disclosing the information. When we receive a request for information which covers confidential or commercially sensitive material, we generally consult with the parties that provided, or are the subject of, the information.

### **Next steps**

26. We encourage you to seek out advice if you are unsure how this regulatory regime applies to your business.

### *How do I stay aware of the Commission's work in this area?*

27. We will continue to publish updates on our website and will email interested parties when these are updated. If you would like to receive these updates, please email [market.regulation@comcom.govt.nz](mailto:market.regulation@comcom.govt.nz) with the subject line '*Subscribe RPS*'.

28. If you have any queries about this letter or our retail payment system work more generally, please contact Matthew Lewer (Manager, Retail Payment System Regulation) at [market.regulation@comcom.govt.nz](mailto:market.regulation@comcom.govt.nz).

Yours sincerely

A handwritten signature in black ink, appearing to read 'NRuss', written in a cursive style.

Nick Russ  
General Manager, Market Regulation

## The Commission's role in regulating the retail payment system at a glance

### Compliance & enforcement

#### Assessing and investigating compliance

- To begin with, the only enforceable obligations will be those arising under the initial pricing standard, which applies to the initial designated networks. This means the Commission's assessment of compliance will be limited to the initial pricing standard.

#### Enforcement

- The Commission has a number of enforcement tools, including the ability to seek pecuniary penalties of up to \$5m in court for contraventions of pricing standards. Breaches of merchant surcharging standards may attract a pecuniary penalty of up to \$600k.

### Monitoring

#### Regular analysis and reporting

- The Commission is responsible for monitoring competition and efficiency in the retail payment system.  
- This may take the form of regular analysis and reporting supported by an information disclosure standard.

#### Inquiries, reviews and studies

- In addition to general monitoring, the Commission may conduct inquiries, reviews and studies into any matter relating to the retail payment system in New Zealand.

### Rule setting

#### Recommending designations

- The Commission may recommend to the Minister that a retail payment network (except cash) be designated.  
- A network needs to be designated before regulation (standards or directions) can be applied to participants of the network.

#### Setting network standards and directions

- The Commission can impose requirements on any participant of a designated network by issuing standards. Standards can relate to pricing, information disclosure, or access requirements.  
- The Commission can give directions requiring a network operator to set, amend or notify its network rules.

#### Setting merchant surcharging standards

- The Commission can issue merchant surcharging standards for the purpose of ensuring that surcharges for payment services are no more than the cost to the merchant of the payment services used for accepting retail payments.

In addition to the Retail Payment System Act 2022, the Commission enforces other legislation that applies to the retail payment sector. This includes the Commerce Act 1986, which prohibits anti-competitive conduct and acquisitions that substantially lessen competition, and the Fair Trading Act 1986 which prohibits false and misleading conduct and other unfair business practices. The Retail Payment System Act 2022 does not limit participants' obligations under these other pieces of legislation.